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Human Trafficking in Maine: Protection, Prevention, and Prosecution

The Need for a Stand-Alone Statute

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The United States enacted the Trafficking Victims Protection Act (TVPA) of 2000 to combat the crime of organized firms engaging in the trafficking of humans. The TVPA has resulted in competing definitions and competing agendas which contribute of a public misunderstanding of the nature and scope of human trafficking as a domestic policy issue. Early goals of protection of victims, prevention of future trafficking crimes, and prosecution of traffickers have not been met with empirically driven success. This paper outlines obstacles facing evidence-based legislation in the state of Maine which currently has no stand-alone law protecting victims of sex trafficking and seeks to provide a simple guideline for increasing legislative support.

INTRODUCTION

The success of human trafficking schemes is possibly the worst failure of domestic and international policy. Sex trafficking, a derivative of human trafficking, occurs on a global scale with striking proportions. Reports estimate that there are now more human slaves on the illegal trade market than at any other time in history. During the height of the antebellum slave trade, it is estimated that approximately 20,000 men, women, and children were forced from their homes and sold into the service of others (Wooditch, 2009). They were used for labor and for sex. Current estimates of human trafficking place the number of trafficked men, women, and children between 700,000 to 2 million (Rieger, 2007). Of these, it is believed that 200,000 are United States citizens (United Nations Office on Drugs and Crime, 2014). These victims remain within the sovereign borders of their home country and are sold domestically.

This research led me to several questions regarding the scope of the issue, the current need in our community, and the resources in place to address that need. I first wanted to define human trafficking in order to understand what is happening to these victims and to identify crimes that may be trafficking but are not categorized as such. Second, I wanted to know if human trafficking was a problem in Maine. Are Mainers being targeted as victims and are they being trafficked. My next question dealt with the resources available to assist law enforcement efforts in the state of Maine. Does Maine have a stand-alone statute with which to prosecute perpetrators of human trafficking? I determined that the question regarding the need for such a statute would be answered by my research into the scope of the trafficking problem in Maine. Lastly, I wanted to find out what resources are in place to protect and assist identified victims of

trafficking in Maine. Are there wrap-around law enforcement, health care, and social service provisions specifically designed to help these victims recover?

Sexual exploitation has captured national and local media attention in recent months. On March 18, 2014, the Bangor Daily News reported a story about three residents of Gorham, Maine who were arrested and charged with sex trafficking (Brogan, Three Arrested in Gorham Sex Trafficking Sting, 2014). The introduction on this story is misleading. Since the State of Maine does not have a stand-alone statute with which to charge perpetrators of trafficking, these individuals could not have been charged with sex trafficking. It is more likely that they were charged with kidnapping, criminal restraint, and/or aggravated promotion of prostitution (Koenig, 2012). This example is only one of many in the last several weeks. Examples that prove what law enforcement officers have been stating to reporters over the past two years. Sex trafficking is happening in Maine and one needs only “look at the police blotter and see charges that could really be tied to human trafficking, but we don’t have a stand-alone [criminal] statute for human trafficking” (Koenig, 2012).

Morality crusaders have long denounced prostitution as sinful, a sign of the greater moral decay that is supposedly ruining the country. Considered a threat to the traditions of marriage and the sanctity of the family, religious conservatives have found a new soap-box in campaigns against human trafficking. They link sex trafficking with all forms of prostitution and demand an end to the commercial sex trade on the grounds that all prostitution is a human rights abuse (Weitzer, 2010). While this perspective makes the identification of victims more efficient: all prostitutes are victims, there is no moral equivalency when we compare an adult call girl in an affluent neighborhood who keeps her own income and works for herself, and the female minor who was taken from her home, is held by threat of force and raped multiple times per day. There are many factors that contribute to the enslaved conditions that arise from human

trafficking. Historically, stereotypes depict the U.S. victims of trafficking as innocent young girls from other countries who are either sold or traded by their families or manipulated, lied to, and often kidnapped and threatened into a life of sexual slavery (Clawson & Dutch, 2008). Current data provides a more comprehensive understanding of victims. Men, women, and children of all ages are trafficked. And, although the United States is the primary destination for trafficked victims from abroad, statistics indicate that approximately 83% of identified victims are U.S. citizens (TVPA, 2000). This new understanding casts a harsh light on the reality of the kinds of people who may fall victim to trafficking. It is understood that all trafficking victims, regardless of country of origin, share a common set of risk factors that make them more vulnerable to the kinds of push/pull factors that traffickers rely upon to coerce their victims.

In the United States, efforts to curtail the illegal importation of trafficking victims led to the enactment of the bi-partisan Trafficking Victims Protection Act of 2000 (TVPA). Under U.S. law, human trafficking is defined as the recruitment, harboring, provision, receipt, transportation, and/or obtaining of individuals by use of force, threats, coercion, abduction, fraud, and/or systems of indebtedness or debt bondage for purposes of sexual or other forms of economic exploitation (TVPA, 2000). This definition, adapted from the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons in 2000, identifies three main elements of trafficking (United Nations Office on Drugs and Crime, 2014). The action of trafficking, what is being done; the means, how it is accomplished; and the purpose, why victims are trafficked. Similarly, enforcement efforts are focused on a three-pronged approach favoring prosecution of criminals, protection of victims, and prevention of the crime. The early goal of the TVPA was to curtail the influx of international trafficking victims into the United States and designated human trafficking as an organized crime which fell under the Racketeering Influenced and Corrupt

Organizations Act (RICO). Very little was spoken of the growing domestic human trafficking problem. These policy developments enhanced the criminal and civil penalties assigned to individual traffickers and itemized the sanctions to be imposed on countries aware of or involved with the international human trafficking market (Wooditch, 2009).

The Trafficking Victims Protection Act has been reauthorized several times. In 2003, 2005, 2008, and 2013 the TVPA included important provisions that were recognized as necessary to the prosecution of traffickers and the protection of victims. The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003) provides that trafficking victims have the legal civil right to sue their traffickers. It also added human trafficking to the list of crimes that can be charged under the Racketeering Influenced Corrupt Organizations (RICO) statute. Provisions for the protection of immigrant victims and their families from deportation were also added. In 2005 the reauthorization included a pilot program for sheltering minors who are survivors of human trafficking, and grant programs to assist state and local law enforcement combat trafficking. It also expanded measures to combat trafficking internationally including a strengthening of the regulation over government contracts to ensure they are not made with individuals or organizations that promote or engage in human trafficking. The 2008 reauthorization expanded the protections available with the T visa, and required that all unaccompanied alien children be screened as potential victims of human trafficking. This reauthorization also enhanced criminal sanctions against traffickers, and expanded definitions of various types of trafficking to make prosecution easier. Most recently, as an amendment to the Violence Against Women Act, the TVPRA 2013 establishes and strengthens programs to ensure that U.S. citizens do not purchase products made by victims of human trafficking, and to prevent child marriage. It also puts into place emergency response provisions within the State Department to respond quickly to disaster

areas and crises where people are particularly susceptible to being trafficked. The reauthorization also strengthens collaboration with state and local law enforcement to ease charging and prosecuting traffickers (Polaris Project, 2014).

METHOD

In order to address my question of what is human trafficking, I turned to the definitions listed in Trafficking Victims Protection Act of 2000. Since this is the document by which states are modeling their statutes, it was a natural first step. I then turned to the dozens of newspaper articles that have been published in the last several months in order to gain an understanding about the current scope of the human trafficking problem in Maine. This research clearly indicated that Maine does in fact have a need for a stand-alone statute.

From here, I turned to the question of creating this statute. What resources do Maine law enforcement officers have and what resources do they need. I began with an extensive review of current research on domestic and international human trafficking in various forms as part of the data collection process in order to understand current theory regarding the success and limitations of the statutes currently in place. I then reviewed state and federal legislation which defines the parameters of the crime, the identification of victims and the services they may access, and the penalties assessed to perpetrators convicted of trafficking. Given the lack of available studies in the state of Maine, I had to seek out information on how other states have responded to this new criminal threat. For the sake of similarities in geography and population, I chose to focus on examples from the state of Vermont. To supplement this research I sought out policy makers and experts in Maine and attended a training conference for service providers and law enforcement officials. I concluded by conducting interviews with Phil Crowell, police chief of the city of Auburn, Maine; Bill Legere, founder of the Hope and Grace Foundation and one of

the primary organizers of the Not Here Conference; and Seth Koenig, Portland Bureau Chief for the Bangor Daily News in order to gain a better understanding of the challenges Maine law enforcement and policy makers. The timing of my interviews coincided with a period of increasing attention and activity on the part of law enforcement officers and service providers. Because of this, many of my intended interviews were cancelled or rescheduled beyond my deadlines.

After a preliminary literature review, I decided to narrow the focus of this paper to Maine's response to the crime of sex trafficking. Although reports indicate, and experts concur, that Maine does experience a sizable labor trafficking industry, this paper will not address these crimes. While many of the techniques used to manipulate the victims of labor trafficking are similar to those used to coerce victims of sex trafficking, there are nuanced differences that demand more attention than this research can dedicate. In order to understand sex trafficking, it must be separated from its component crimes such as human smuggling and prostitution. I further narrowed the scope of my research to female victims of sex trafficking. This is in no way meant to diminish the experience of the numbers of male victims of sex trafficking; rather, it is simply an illustration of the specificities required when defining these issues.

My research was further restricted by the timing of an annual conference on human trafficking. The Not Here Conference, held at Pineland Farms in New Gloucester, Maine was scheduled for the middle of April, 2014. Thanks to the generous support of the Auburn Police Chief Phil Crowell, I was able to attend the conference and speak with several service providers. Unfortunately, due to time restrictions and the large number of conference attendees, I was unable to meet with several presenters such as Meg Elam, DA and Courtney Schaad of

Vermont's Give Way to Freedom Foundation, part of the Vermont Task Force Against Human Trafficking.

THE PROBLEM: CONDITIONS, EFFECTS, AND AFTERMATH OF SEX TRAFFICKING

Globally, sexual domination remains perhaps the most pervasive ideology of our collective culture. The demand for submissiveness provides the most fundamental concept of power over another human being (Millett, 2009). Perhaps in response to this construction of the power dynamic, the TVPA dichotomizes trafficking crimes into sex trafficking and labor trafficking. Although trafficking in persons is not limited to the commercial sex industry, this paper will limit the scope of investigation into practices involving the identification and services of victims of sex trafficking in order to avoid the assumption that best practices for the protection of one type of victim is the best practice for all victims. I will further focus on the provision of protection and services to female victims of sex trafficking because between 81- 94% of victims are identified as women or girls (State, 2008), (TVPA, 2000). This is particularly true for victims of Domestic Minor Sex Trafficking (DMST) which is not explicitly defined in the TVPA (Siskin & Wyler, 2011). In the case of minors, according to U.S. laws, there is a general understanding that a minor cannot consent to a sexual act. Given this fact, there is general agreement that the prostitution of minors fits the description of severe forms of human trafficking as defined under the TVPA.

As stated earlier, the focus of this paper is the identification delivery of service to female victims of human sex trafficking. Because women are more likely to experience the push/pull factors associated with the highest risk, they are automatically more vulnerable to perpetrators of trafficking. Internationally, victims come from countries or communities with high rates of crime and poverty, lack of opportunities for jobs or education, and a lack of a familial support system.

Additionally, these women and girls have a higher incidence of childhood sexual or physical abuse (Polaris Project, 2014) (Clawson & Dutch, 2008). In general, women and girls are more likely to experience extreme poverty, lack of education and childhood abuse than their male counterparts (United Nations Office on Drugs and Crime, 2014). Traffickers take advantage of the unequal status of women and girls and prey upon their desires for a better life for themselves or their families (Central Intelligence Agency, 2013). The adaptive acceptance of these socio-economic factors can lead women and girls toward one of two paths of victimization. Either adaptive acceptance has conditioned them to view their ill and harmful treatment as normal, or they perceive their traffickers as having rescued them from a painful or shameful lifestyle with promises of something better. Younger women in particular are vulnerable to viewing their trafficker as their boyfriend (Polaris Project, 2014).

Sex traffickers are physically and psychologically resourceful. Their techniques for procuring victims are, necessarily, as varied as the victims themselves. Some women are kidnapped and forcibly held, often drugged, and made to perform sex acts for their profit. Others are coerced into this lifestyle with the promise of a better life for themselves or their families. Still others are held under the pretense of peonage but are in fact prisoners of debt bondage. This transition occurs most often when young children are offered as laborers to satisfy a debt incurred by their family. These debts can be black market charges for drugs or other illicit activities, or, as is most often the case in developing countries, the charges can be the result of medical expenses resulting from a family illness. Children who are traded this way are often pledged as a security for this debt. However, the value of the services rendered is often not applied, or not wholly applied toward the elimination of the debt (TVPA, 2000).

Traffickers are often jointly involved with other criminal activities that can instill the threat of violence in victims without the explicit threat ever being spoken. Trafficking in drugs or weapons alongside human trafficking adds an element of criminal danger to the experiences of the victims. While their personal experiences are frequently seen as situations that were caused by their own decisions, involvement with drugs and weapons highlights the potential for dangerous exposure to law enforcement and other violence from criminal associates. Fear is one of the most effective tools traffickers use to manipulate their victims; victims act with compliance in order to avoid being punished or left behind without protection (United Nations Office on Drugs and Crime, 2014).

The fear of being left behind is a result of the traumatic and complex nature of the relationships built within the power structure of the human trafficking organization. Traffickers are adept at creating a sense of dependence among their victims (Asian & Pacific Islander Institute on Domestic Violence, 2014). This is particularly true for victims who are trafficked by people with whom they are familiar, a family member or friend or intimate partner. Additionally, many victims develop a dependence on drugs that are supplied by their traffickers. The threat of being abandoned is coupled then with the threat of losing their drug supply. Another principal concern is the development of mental health issues. Significant psychological distress precipitated by the betrayal inflicted by family members, friends or intimate partners who are intentionally or unintentionally involved in trafficking is common among victims of trafficking (Clawson & Dutch, 2008).

All of these techniques and methods perpetrated by traffickers are dependent on the successful identification of a victim. According to Siskin & Wyler (2011), most domestic victims of trafficking are U.S. citizens who have not yet attained the age of 18. Although their report

goes on to indicate that the TVPA recognizes minor victims who were forced or consented to the commercial sex trade, it is widely understood now that a minor cannot consent, volunteer, or otherwise willingly enter the commercial sex trade ((Asian & Pacific Islander Institute on Domestic Violence, 2014)). There now seems to be a consensus that the prostitution of minors fits the TVPA’s definition of a “severe form” of sex trafficking (Siskin & Wyler, 2011). This is also the perspective of Maine law enforcement officers, prosecutors, and judges.

THE PROTECTION: HOW THE TVPA FAILS TO PROTECT VICTIMS

The Trafficking Victims Protection Act of 2000 was considered a landmark of anti-slavery legislation (George, 2012). The initial incarnation of the TVPA did not initially distinguish between the various types of human trafficking. On one hand, this was a disservice to the many victims, but, on the other hand, the original act framed trafficking as a human rights issue (Vance, 2011). This fact leads us to consider the inconsistencies inherent in between the text of a law and the implementation. Though originally considered a violation of human rights, trafficking is prosecuted through criminal law and convention. International and U.S. laws against trafficking are stated within criminal codes (Vance, 2011). While these codes explicitly identify penalties for traffickers, the TVPA fails to protect victims in numerous ways. Protection, prevention, and prosecution; all goals of the TVPA, are the three areas in which policymakers, law enforcement officers, and service providers are failing.

Protection of Victims

Protection services are a mandated aspect of the TVPA (Vance, 2011). However, in order for a victim to receive assistance under the TVPA, she must first *qualify*. In order to receive the offered benefits, a victim of trafficking must first be certified as a “severe trafficking victim” by the Department of Health and Human Services (DHHS) (George, 2012). This qualification

requires that the victim self-identify as having been forced, coerced, or otherwise induced to perform a commercial sexual act, or she must declare that she was the victim of involuntary servitude, debt bondage, peonage, or slavery. Victims who are under the age of 18 are considered victims of severe trafficking by their minority status (George, 2012).

This protection is flawed for several reasons, the most devastating being that victims of trafficking may not realize that they have been exploited. The emotional turmoil that a victim undergoes is severe and frequently results in PTSD. Victims of trafficking often feel responsible for their circumstances and may even feel a sense of obligation to their traffickers. Furthermore, due to a general lack of education on these matters, many victims may not know that the experiences to which they have been subjected are in fact a crime. The way that victims are viewed must be a priority for officials to be able to make an impact in the field. For instance, although it is now widely understood that minors under the age of consent are not responsible for any perceived decision to enter the commercial sex industry, the conceptualization of the victim as a young innocent may create barriers to the process of understanding that adults who may have made objectionable choices are also victims deserving of protection and healing services.

Prevention of Future Trafficking

Prevention based efforts tend to focus on anti-prostitution legislation. The TVAP, once a piece of anti-slavery legislation, has evolved into anti-prostitution policy (Potocky, 2009). This shifting focus points out the opposing motivations that have created contradictions, inconsistencies, and political and legislative struggles. Because there have been no reliable estimates of the number of victims accessing services, prevention efforts are stalled (Potocky, 2009). Governmental studies have provided suspect data with no identified methodology, incorrect levels of measurement, or reliance on baseless assumptions (Wooditch, 2009). Any

attempt at prevention must begin with an understanding of potential victim identification. This can occur in two possible ways: first, a survey questioning teen experience could be distributed by several levels of service providers such as school counselors or health care providers, nurses, social workers, advocates at teen drop-in centers, and homeless youth service agencies (Vance, 2011). Second, school-based education programs, common among domestic violence and sexual assault (DV/SA) agencies, must begin to teach students about the vulnerabilities traffickers seek out when identifying new victims. This curriculum can utilize the same framework that DV/SA educators use. The structures of power and control inherent in these relationships are not new topics of instruction, but the outcome of a young person being coerced into a life in the commercial sex industry may very well be considered as impossible. Education and awareness are crucial for officials to be able to prevent future trafficking victims (Clawson & Dutch, 2008).

Prosecution of Traffickers

Prosecution may be considered the primary focus of the TVPA (Wooditch, 2009). In spite of textual intent to provide services and protection, the TVPA is clearly written to further criminal prosecution. With a declaration that identified trafficking as a “global business reaping huge profits for traffickers and organized crime syndicates,” the Racketeering Influenced and Corrupt Organization (RICO) Act enhanced criminal penalties by identifying traffickers as members of organized crime. As of a 2006 study on prosecution and conviction rates, although the number of criminally charged has increased, the number of convictions has not. If prosecution was ever intended to deter traffickers, this goal has fallen short (Wooditch, 2009). These statistics must be viewed carefully, however, From 2001-2007, the United States Attorney’s Office showed a 76% conviction rate in trafficking cases. While this number is admirable, it is important to note that the 449 cases brought before the federal bench was only a

small percentage of the more than 700 cases that could have been prosecuted. According to research, nearly 60% of trafficking cases are declined for prosecution as opposed to a rate of 25% for all other federal cases. (Potocky, 2009). These figures indicate that prosecution of trafficking cases is problematic.

Another weakness in the prosecution aspect of the TVPA is the heavy reliance on victim testimony. The law clearly indicates that in order to qualify to receive the benefits associated with the protection aspect of the TVPA, the victim must be willing to cooperate with the prosecutorial process. (TVPA, 2000). It is well known that victim testimony is one of the most unreliable elements of any criminal prosecution. That such a recent federal law would mandate that a victim who has experienced untold trauma must assist, cooperate, and testify in a court of law against their trafficker, for whom they may hold extremely fragile and complicated feelings including obligation, fear, resentment, and even love, is incomprehensible (George, 2012). To deny victims the services they need in order to repair their lives and reenter society unless they are willing to face the individual that enslaved them is to re-victimize her.

Maine's Response

Law enforcement officials in the state of Maine understand the effect of this phenomenon and are working to prevent the sort of institutional assault that victims may face once they are ushered into the "system". One of the provisions of a bill introduced in the 123rd Maine State Legislature would have ensured that damages, compensation, and other services were not linked to victim participation in the prosecution of their traffickers. Unfortunately, Maine's efforts at proactive legislation have not seen the support that would indicate a universal understanding of the crime of human trafficking and its effects on Maine residents.

Phil Crowell, Chief of the Auburn, Maine Police Department and leading member of the Attorney General's Human Trafficking Work Group, believes that the lack of support for the legislation that his task force has been working on is a result of a lack of education about the real effects this crime has on Mainers. This group, formed in 2005 as a result of the 122nd Legislature, has the stated mission of targeting statewide policy and infrastructure opportunities in order to support state and local response to the crimes of trafficking and sex exploitation. They further hope to provide a statewide platform for sharing local trafficking resources and coalition development. To this end, they were a major sponsor of this year's Not Here Conference, a yearly professional education conference directed toward law enforcement and health and service providers. This kind of educational outreach is an important part of improving the feasibility of planned policy measures since subsequent acts to implement the recommendations of the Human Trafficking Work Group which would criminalize involuntary servitude and human trafficking were not successful. Although a stand-alone statute has yet to be realized in the Maine House, elements of anti-trafficking legislation are evidenced by the successful adoption of L.D. 1730 on April 10, 2014. This bill makes trafficking an affirmative defense to prostitution charges and provides identified victims with access to the victims' compensation fund.

Beyond the committees and representatives working toward advancing pro-active legislation to protect victims of trafficking, there is a general disbelief that sex trafficking is happening here in Maine. Given the recent abundance of news articles and reports on the matter, it's difficult to understand how this could be true. On April 21, 2014, one newspaper reported the indictment of a 20 year old male charged with forcing a 16 year old into prostitution. The gender of the minor victim was not disclosed. On April 10, 2014, a paper reported the arrests of three

individuals suspected of running a sex trafficking ring in Western Maine (Gagnon, 2014). On March 14, 2014, a group of Gorham residents were arrested after a search warrant was executed at the suspects' home (Brogan, 2014). On February 28, 2014, police officers in Portland, Westbrook, South Portland, and Scarborough collaborated with deputies from the Cumberland County Sheriff's Office and the Maine Drug Enforcement Agency in an operation to combat human trafficking (McLaughlin, 2014). The result of this operation was the arrest of four individuals suspected of varying levels of participation in sex trafficking. This particular operation also targeted the individuals responsible for furthering trafficking: commercial sex customers.

THE POSSIBILITIES: LINKING TRAFFICKING POLICIES

Women in Maine are being targeted as a commodity that can be bought and sold. They are located in the various towns and cities in this state and are groomed and pimped both within our borders and across state lines throughout the eastern seaboard. Additionally, women outside of Maine are being trafficked within our borders because of the security provided by lax laws. Law enforcement officials know these crimes occur at a staggering pace and must sit by while perpetrators remain free and victims enslaved.

Assessment of counter trafficking programs is at an early stage. Both state and federal statutes must be evaluated in order to ascertain their effectiveness at preventing trafficking and assisting identified victims. Investment in the evaluation of these programs and laws could lead to interventions that limit human and social costs of trafficking. Although there are studies, like this paper, they have been limited to qualitative rather than quantitative methodologies (Danailova-Trainor, 2010). Consequently, services are being delivered to victims without an understanding of their effectiveness (Potocky, 2009). Furthermore, few evaluations focus on

assessing impact, preferring to assess process. Additionally, given the number of years since the enactment of the TVPA, a longitudinal study assessing victim reintegration into society could provide important insights into the kinds of services that might best enhance victims' social and economic successes.

The capacity to develop and generate data is a requisite for achieving policy coherence and evidence-based policy making. Without the ability and support for collecting, compiling, analyzing, and reporting on the most basic data, we cannot inform our policymakers and assist the victims of our state. Priority should be given to collaborative and governmental agencies to design, implement and maintain the information systems necessary to maintain a fully functioning anti-trafficking task force within the state of Maine. Until these priorities are forged, Maine law enforcement will continue to lack the resources necessary to track, arrest, and charge perpetrators of this crime. Without data driven results, victims will continue to remain in the shadows of our justice system. The only way their voices will be heard and their stories told is if a bi-partisan investigative committee gains the support of our representatives.

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